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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/492,137	01/27/2000	Takayuki Watanabe		9482

7590

03/05/2004

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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/492,137

Applicant(s)

WATANABE ET AL.

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6,8 and 10-13 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-4,6,8,10^{md 12} is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In response to applicant's Request to withdraw the Finality of the Rejection regarding the last Office action mailed January 30, 2004, the following corrective action is taken: (1) the finality of that action is withdrawn and (2) the period for reply of 3 MONTHS set in said Office Action is restarted to begin with the mailing date of this Office action. The rejections made in the Office Action mailed January 30, 2004 are included with this Office Action.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-4,6,8,10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shisheido (JP06040845 A) in view of Hattori (JP 06157238A).
4. Regarding claims 1-4,6,8,10, Shiseido teaches a solid powder containing trehalose up to 50% as recited in claims 1 and 6, with perfume and a water soluble polymer. The intended purpose is a non-sticky cosmetic that maintains moisture, but is still stable (English Abstract and English Specification Paragraphs 0001-0006). However, Shiseido is silent in teaching the water soluble polymer includes hemicellulose with a MW of 50,000 to 1,000,000 derived from soybean by acidic heat extraction as recited in claims 1-4 at 10-40% in the powder as recited in claim 8, with a weight ratio of 30:1 to 1:25 or 8:1 to 1:1 trehalose to hemicellulose as recited in claims 1 and 10.

5. Hattori et al also teaches a cosmetic that retains moisture for an extended shelf life using water soluble polymers. Hattori et al. teach that conventional water soluble polymers have faults and add hemicellulose at a level of 0.001-20% to increase the moisture retention and increase self life, as recited in claim 8 (English Specification Paragraphs 0001-0007, 0015-0020). Hattori et al. further teach the water soluble hemicellulose has a MW of 50,000 to 1,000,000 derived from soybean by acidic heat extraction as recited in claims 1-4 (English Abstract and English Specification Paragraph 0011).

6. Therefore, it would have been obvious to include hemicellulose in the solid powder cosmetic of Shiseido in the solid powder and at an amount between 10% and 40% (e.g. 10-20%), as recited in claims 1 and 8, or a weight ratio of 30:1 to 1:25 or 8:1 to 1:1 trehalose to hemicellulose (e.g. 5:1 from 50% trehalose as taught by Shiseido and 10% hemicellulose as taught by Hattori et al.) as recited in claims 1 and 10, since Hattori et al. teach hemicellulose overcomes the problems of conventional water soluble polymers at these levels to enhance the moisture retention and increase shelf life of cosmetics. One would have been substituting one known water soluble polymer for another for the same purpose: a cosmetic that retains moisture without deteriorating for an extended shelf life. It would have been further obvious to select hemicellulose with a MW of 50,000 to 1,000,000 derived from soybean by acidic heat extraction, as recited in claims 2-4, since Hattori et al. teach this is the conventional type of hemicellulose used to enhance the moisture retention and increase shelf life of cosmetics. One would have been substituting one known water soluble polymer for another for the same

purpose: a cosmetic that retains moisture without deteriorating for an extended shelf life.

7. Claims 1,6,8, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morimoto et al. (JP 10056969 A) in view of Morimoto et al. (JP 10066516).


8. Morimoto et al. ('969) teaches a soybean protein/cocoa granule for a drink, as recited in claim 12, wherein the cocoa, which is taken to be a coloring agent as recited in claim 1, 1-6% pullan or hemicellulose as recited in claim 1 (See English Abstract and English Specification, paragraphs 0008-0018). However, Morimoto is silent in teaching trehalose in a quantity of 25 -85% or 40-80%, as recited in claims 1 and 6, such that the trehalose to hemicellulose ratio falls within the range of 30:1 to 1:25, as recited in claim 1, and 8:1 to 1:1, as recited in claim 10.

9. Morimoto et al. ('516) also teaches a soybean protein/cocoa powder for preparing a drink comprising cocoa, pullan, and trehalose. However '516 teaches that soybean protein flavor is very pronounced and one must add at least 5% trehalose, and up to 40%, to mask the soybean flavor in the cocoa (Abstract, paragraph 0001-0015). Therefore, it would have been obvious to modify '969 and include anywhere from 25% to 40% trehalose in the soybean protein/cocoa powder, as recited in claims 1 and 6, such that the trehalose to hemicellulose ratio falls within the range of 30:1 to 1:25 or 8:1 to 1:1, as recited in claims 1 and 10, since '516 teaches 5-40% trehalose improves the flavor of a soybean protein/cocoa powder.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.
11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.
12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Claims 1-4,6,8,10-13 remain pending, and claims 11 and 13 were withdrawn from consideration as being non-elected inventions.

Robert Madsen
Examiner
Art Unit 1761



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